

REAL ESTATE COMMISSION[193E]

Notice of Intended Action

Proposing rule making related to trust accounts and seller property condition disclosure

The Real Estate Commission hereby proposes to amend Chapter 13, “Trust Accounts and Closings,” and Chapter 14, “Seller Property Condition Disclosure,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code section 543B.9 and 2017 Iowa Acts, House File 541.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code section 543B.9 and section 543B.31 as amended by 2017 Iowa Acts, House File 541.

Purpose and Summary

The proposed amendments implement 2017 Iowa Acts, House File 541, section 4, which amends Iowa Code section 543B.46 and provides clarification of when a licensed real estate broker will be required to maintain a trust account in a federally insured depository institution. The proposed amendments implement 2017 Iowa Acts, House File 541, sections 14 and 16, which require that the Commission adopt rules that define what acknowledgment of receipt is when a seller disclosure statement form is delivered electronically. The proposed amendments are also a result of the rolling five-year review of administrative rules outlined in Iowa Code section 17A.7(2).

Chapter 13 describes the general requirements for real estate trust accounts and closings. The proposed amendments to Chapter 13 will provide clarification of when a licensed real estate broker will be required to maintain a trust account in a federally insured depository institution and will provide for a general cleanup of the chapter. Chapter 14 describes the general requirements for the property condition disclosure form. The proposed amendments to Chapter 14 will define what acknowledgment of receipt is when a seller disclosure statement form is delivered electronically and provide for a general cleanup of the chapter.

These proposed amendments were approved by the Commission on June 30, 2017.

Fiscal Impact

After analysis and review of this rule making, the Professional Licensing and Regulation Bureau determined that there will be no fiscal impact to the state.

Jobs Impact

After analysis and review of this rule making, the Professional Licensing and Regulation Bureau determined that there will be no impact on jobs.

Waivers

These amendments are subject to waiver or variance pursuant to 193—Chapter 5.

Public Comment

Any interested person may submit written comments concerning this proposed rule making. Written comments in response to this rule making must be received by the Commission no later than 4:30 p.m. on February 6, 2018. Comments should be directed to:

Jeffrey Evans
Real Estate Commission
200 East Grand Avenue, Suite 350
Des Moines, Iowa 50309
Email: jeff.evans@iowa.gov

Public Hearing

A public hearing at which persons may present their views orally or in writing will be held as follows:

February 6, 2018, at 12 noon
Commission Office, Suite 350
200 East Grand Avenue
Des Moines, Iowa

Persons who wish to make oral comments at the public hearing may be asked to state their names for the record and to confine their remarks to the subject of this proposed rule making.

Any persons who intend to attend a public hearing and have special requirements, such as those related to hearing or mobility impairments, should contact the Commission and advise of specific needs.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its regular monthly meeting or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rule-making actions are proposed:

ITEM 1. Amend rule 193E—13.1(543B) as follows:

193E—13.1(543B) Trust account. All earnest payments, all rents collected, property management funds, and other trust funds received by the broker in such capacity or broker associate or salesperson on behalf of the broker's client shall be deposited in a trust account maintained by the broker in an identified trust account, with the word "trust" in the name of the account, in a federally insured ~~bank, savings and loan association, savings bank, or credit union located in Iowa~~ depository institution and, for the purposes of this rule, may be referred to as the "depository."

13.1(1) All money belonging to others received by the broker, broker associate or salesperson on the sale, rental, purchase, or exchange of real property located in Iowa are trust funds and must be deposited in a trust account as directed by the principals to a transaction constituting dealing in real estate. This shall include, but not be limited to, receipts from property management contracts; rental or lease contracts; advance fee contracts; escrow contracts; collection contracts; earnest money contracts; or money received by a broker for future investment or other purpose, except a nonrefundable retainer need not be placed in an escrow account if specifically provided for in the written agreement between the broker and the broker's principal.

a. All trust funds must be deposited into the broker's trust account by no later than five banking days after the date indicated on the document that the last signature of acceptance of the offer to purchase, rent, lease, exchange, or option is obtained.

b. Money belonging to others shall not be invested in any type of fixed-term maturity account, security or certificate without the written consent of the party or parties to whom the money belongs.

c. A broker shall not commingle personal funds in a trust account; provided, however, that not more than ~~\$500~~ \$1,000 of the broker's personal funds may be maintained in each separate account if (1) such personal funds are separately accounted for and (2) such personal funds are intended to be used by the broker to pay for expenses directly related to maintaining the account.

The broker shall ensure that personal funds are deposited to cover bank service charges as specified in Iowa Code section 543B.46; and that at no time are trust moneys used to cover any charges. Upon notification that the broker's personal funds are not sufficient to cover service charges initiated by the bank that are above the normal maintenance charges, the broker shall deposit personal funds to correct the deficiency within 15 calendar days of the closing date of that bank statement.

d. Money held in the trust account, which becomes due and payable to the broker, shall be promptly withdrawn by the broker.

e. The broker shall not use the trust account as a business operating account or for personal use. Commissions, salaries, related items and normal business expenses shall not be disbursed directly from the trust account.

13.1(2) to 13.1(4) No change.

13.1(5) A broker shall be required to open and maintain one or more trust accounts if the broker ~~receives or expects to receive trust funds~~ is in the practice of depositing funds in a trust account. For each separate trust account opened, the broker shall file with the commission a written Consent to Examine and Audit Trust Account form, which irrevocably authorizes the commission to examine and audit the trust account. The form of consent shall be prescribed by and available from the commission; and shall include the account names and number; and the name and address of the depository.

a. If the broker ~~does is not expect to receive~~ is in the practice of depositing trust funds in a trust account, the broker shall file an affidavit with the commission on a form prescribed by and available from the commission.

b. If trust funds are received by the broker after filing an affidavit, the broker must immediately open a trust account and file the appropriate Consent to Examine and Audit Trust Account form with the commission.

c. As provided by Iowa Code section 543B.46(3), a consent to examine is not required for a separate farm business operating account in the name of the owner or owners and used by either the farm owner or farm manager or agent to conduct business as a part of a written farm management agreement.

d. As provided by Iowa Code section 543B.46(3), a consent to examine is not required for a separate property management account in the name of the owner or owners and used by either the property owner or property manager or agent to conduct property management as a part of a written property management agreement.

13.1(6) to 13.1(14) No change.

ITEM 2. Amend rule 193E—14.1(543B) as follows:

193E—14.1(543B) Property condition disclosure requirement. The requirements of this chapter shall apply to transfers of real estate subject to Iowa Code chapter 558A. For purposes of this chapter, "transfer" means the transfer or conveyance of real estate by sale, exchange, real estate contract, or any other method by which real estate and improvements are purchased, including rental or lease agreements which contain any option to purchase, if the property includes at least one but no more than four dwelling units unless the transfer is exempted by Iowa Code section 558A.1(4), and "agent" means an individual designated by a transferee to accept delivery of a disclosure statement from a transferor.

14.1(1) No change.

14.1(2) Licensee responsibilities to seller. At the time a licensee obtains a listing, the listing licensee shall obtain a completed disclosure signed and dated by each seller represented by the licensee.

a. A licensee representing a seller shall deliver the executed statement to a potential buyer, a potential buyer's agent, or any other third party who may be representing a potential buyer, prior to the seller's making a written offer to sell or the seller's accepting a written offer to buy.

b. The licensee representing a seller shall attempt to obtain the buyer's signature and date of signature on the statement and shall provide the seller and the buyer with fully executed copies of the disclosure and maintain a copy of the written acknowledgment in the transaction file. If the licensee is unable to obtain the buyer's signature, the licensee shall obtain other documentation establishing delivery of the disclosure and maintain the written documentation in the transaction file.

c. If the transaction closes, the listing broker shall maintain the completed disclosure statement for a minimum of five years.

d. The executed disclosure statement shall be delivered to the buyer(s) or the buyer's agent by ~~either~~ personal delivery, ~~or by~~ certified or registered mail, ~~or~~ electronic delivery. If there is more than one buyer, any one buyer ~~or buyer's agent~~ may accept delivery of the executed statement.

14.1(3) Licensee responsibilities to buyer: A licensee representing a buyer in a transfer shall notify the buyer of the seller's obligation to deliver the property disclosure statement.

a. If the disclosure statement is not delivered when required, the licensee shall notify the buyer that the buyer may revoke or withdraw the offer.

b. If a buyer elects to revoke or withdraw the offer, the licensee shall obtain a written revocation or withdrawal from the buyer and shall deliver the revocation or withdrawal to the seller within three days following personal delivery or five days following delivery of the disclosure by electronic delivery or mail to the buyer or the buyer's agent.

c. Following revocation or withdrawal of the offer, any earnest money deposit shall be promptly returned without liability pursuant to Iowa Code chapter 558A and rule 193E—13.4(543B).

14.1(4) and 14.1(5) No change.

14.1(6) Acknowledgment of receipt of disclosure statement by electronic means. Whether or not a licensee assists in a real estate transaction, electronic delivery of any property disclosure statement required by Iowa Code chapter 558A shall be not deemed completed until written acknowledgment of receipt is provided to the transferor by the transferee or the transferee's agent. Acceptable acknowledgment of receipt shall include return of a fully executed copy of the property disclosure statement to the transferor by the transferee or the transferee's agent; or a letter, electronic mail, text message, or other written correspondence to the transferor from the transferee or the transferee's agent acknowledging receipt. A computer-generated read receipt, facsimile delivery confirmation, or other automated return message shall not be deemed acknowledgment of receipt for purposes of this rule.

14.1(6) 14.1(7) Minimum disclosure statement contents for all transfers. All property disclosure statements, whether or not a licensee assists in the transaction, shall contain at a minimum the information required by the following sample statement. No particular language is required in the disclosure statement provided that the required disclosure items are included and the disclosure complies with Iowa Code chapter 558A. To assist real estate licensees and the public, the commission recommends use of the following sample language:

RESIDENTIAL PROPERTY SELLER DISCLOSURE STATEMENT

Property address: _____

PURPOSE:

Use this statement to disclose information as required by Iowa Code chapter 558A. This law requires certain sellers of residential property that includes at least one and no more than four dwelling units to disclose information about the property to be sold. The following disclosures are made by the seller(s) and not by any agent acting on behalf of the seller(s).

INSTRUCTIONS TO SELLER(S):

1. Seller(s) must complete this statement. Respond to all questions, or attach reports allowed by Iowa Code section 558A.4(2);
2. Disclose all known conditions materially affecting this property;
3. If an item does not apply to this property, indicate that it is not applicable (N/A);
4. Please provide information in good faith and make a reasonable effort to ascertain the required information. If the required information is **unknown** or is **unavailable** following a reasonable effort, use an **approximation** of the information, or indicate that the information is **unknown (UNK)**. All **approximations** must be identified as **approximations (AP)**;
5. Additional pages may be attached as needed;
6. Keep a copy of this statement with your other important papers.

- | | | |
|--|---------|--------|
| 1. Basement/Foundation: Any known water or other problems? | Yes [] | No [] |
| 2. Roof: Any known problems? | Yes [] | No [] |
| Any known repairs? | Yes [] | No [] |
| If yes, date of repairs/replacement: ____/____/____ | | |
| 3. Well and Pump: Any known problems? | Yes [] | No [] |
| Any known repairs? | Yes [] | No [] |
| If yes, date of repairs/replacement: ____/____/____ | | |
| Any known water tests? | Yes [] | No [] |
| If yes, date of last report: ____/____/____ | | |
| and results: _____ | | |
| 4. Septic Tanks/Drain Fields: Any known problems? | Yes [] | No [] |
| Location of tank: _____ | | |
| Date tank last cleaned: ____/____/____ | | |
| 5. Sewer System: Any known problems? | Yes [] | No [] |
| Any known repairs? | Yes [] | No [] |
| If yes, date of repairs/replacement: ____/____/____ | | |
| 6. Heating System(s): Any known problems? | Yes [] | No [] |
| Any known repairs? | Yes [] | No [] |
| If yes, date of repairs/replacement: ____/____/____ | | |
| 7. Central Cooling System(s): Any known problems? | Yes [] | No [] |
| Any known repairs? | Yes [] | No [] |
| If yes, date of repairs/replacement: ____/____/____ | | |
| 8. Plumbing System(s): Any known problems? | Yes [] | No [] |
| Any known repairs? | Yes [] | No [] |
| If yes, date of repairs/replacement: ____/____/____ | | |
| 9. Electrical System(s): Any known problems? | Yes [] | No [] |
| Any known repairs? | Yes [] | No [] |
| If yes, date of repairs/replacement: ____/____/____ | | |
| 10. Pest Infestation (e.g., termites, carpenter ants): Any known problems? | Yes [] | No [] |
| If yes, date(s) of treatment: ____/____/____ | | |
| Any known structural damage? | Yes [] | No [] |
| If yes, date(s) of repairs/replacement: ____/____/____ | | |
| 11. Asbestos: Any known to be present in the structure? | Yes [] | No [] |
| If yes, explain: _____ | | |
| 12. Radon: Any known tests for the presence of radon gas? | Yes [] | No [] |
| If yes, date of last report: ____/____/____ | | |
| and results: _____ | | |
| 13. Lead-Based Paint: Any known to be present in the structure? | Yes [] | No [] |

14. Flood Plain: Do you know if the property is located in a flood plain? Yes [] No []
If yes, what is the flood plain designation? _____
15. Zoning: Do you know the zoning classification of the property? Yes [] No []
If yes, what is the zoning classification? _____
16. Covenants: Is the property subject to restrictive covenants? Yes [] No []
If yes, attach a copy or state where a true, current copy of the covenants can be obtained:

17. Shared or Co-Owned Features: Any features of the property known to be shared in common with adjoining landowners, such as walls, fences, roads, and driveways whose use or maintenance responsibility may have an effect on the property? Yes [] No []
Any known "*common areas*" such as pools, tennis courts, walkways, or other areas co-owned with others, or a Homeowner's Association which has any authority over the property? Yes [] No []
18. Physical Problems: Any known settling, flooding, drainage or grading problems? Yes [] No []
19. Structural Damage: Any known structural damage? Yes [] No []

You **MUST** explain any "YES" response(s) above. Use the back of this statement or additional sheets as necessary: _____

SELLER(S) DISCLOSURE:

Seller(s) discloses the information regarding this property based on information known or reasonably available to the Seller(s).

The Seller(s) has owned the property since ____/____/____. The Seller(s) certifies that as of the date signed this information is true and accurate to the best of my/our knowledge.

Seller(s) acknowledges requirement that Buyer(s) be provided with the "Iowa Radon Home-Buyers and Sellers Fact Sheet" prepared by the Iowa Department of Public Health.

Seller_____ Seller_____

Date ____/____/____ Date ____/____/____

BUYER(S) ACKNOWLEDGMENT:

Buyer(s) acknowledges receipt of a copy of this Real Estate Disclosure Statement. This statement is not intended to be a warranty or to substitute for any inspection Buyer(s) may wish to obtain.

Buyer(s) acknowledges receipt of the "Iowa Radon Home-Buyers and Sellers Fact Sheet" prepared by the Iowa Department of Public Health.

Buyer_____ Buyer_____

Date ____/____/____ Date ____/____/____

This rule is intended to implement Iowa Code chapters 17A, 272C, 543B, and 558A.